IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.596 OF 1993

The State of Maharashtra ...appellant.

V/s

Pandharinath Bhaurao Deshmukh ...Respondent.

Mr. D.P. Adsule, APP for the State.

None for the respondent.

CORAM: V.M. KANADE, J.
DATE : 3rd February, 2005

ORAL JUDGMENT:

1. Heard the learned APP for the State. None appears for the respondent.

2. The State has filed this appeal challenging the judgment and order passed by the Judicial Magistrate, Fist Class in Sessions Case No.138 of 1989. By the said Judgment and Order dated 5/8/1993, the JMFC was pleased to acquit the accused of the offence punishable under section 498A of the Indian Penal Code.

3. Brief facts are as follows :-

4. Prosecution case is that the accused and the complainant Alka Deshmukh got married in the year 1986

and, after their marriage, they started residing in the house of the accused. Prosecution case is that the accused harassed his wife and he used to tell her that he wanted to marry again for second time and used to demand her signature on the paper. She, therefore, lodged a complaint at Karjat Police Station. The Trial Court, after going through the evidence led by the prosecution, acquitted the accused.

5. P.W. 1 - Vinayak Deshmukh who was examined as a panch witness, did not support the prosecution case and turned hostile. P.W. 2 - Alka Deshmukh, the complainant, stated that two or three months after her marriage, the accused demanded her signature on a plain paper and said that he wanted to marry again and that he did not like to stay with her because she was not smart. She has further stated that he used to beat her. She, therefore, lodged a complaint with the Karjat Police Station. Prosecution then examined P.W. 3 - Shankar Deshmukh, the father of the complainant. P.W. 3 has stated that the accused used to beat his daughter and the complainant also told him about the ill-treatement at the hands of the accused. Prosecution then examined P.W. 4 - Sudhakar Deshmukh who was the brother of the complainant. He also stated in his evidence that the accused used to

illtreat his sister and beat her several times. He has further stated that his sister has told him about the ill-treatement and beating by the accused. She had also informed him that accused used to beat her because she was not smart.

6. From the evidence of the complainant, her father and brother, it has been established that the accused used to beat the complainant. The complainant herself has stated in her evidence that the accused felt that she was not smart and, therefore, he used to beat her. Further, the complainant has stated in her evidence that the accused wanted to marry again for the second time as he disliked her. In my view, from this evidence it cannot be said that the offence under section 498A has been made out. This Court has taken a view that every ill-treatment at the hands of the husband will not amount to an offence under section 498A. Section 498A provides that if the wife is harassed because of nonpayment of dowry and as a result of such harassment and cruelty, wife commits suicide, in these two instances only the offence under section 498A will be attracted. In the present case, this is not the allegation of the wife - P.W.2. Therefore, the prosecution has failed to prove that the accused had committed an offence punishable under

section 498A. The Trial Court was justified in acquitting the accused. The judgment and order of the Trial Court is confirmed. Appeal is accordingly dismissed.

V.M. KANADE, J.